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June 7, 2002

Mr. William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington D.C. 20024

RE: Comments: CS Docket No. 02-52, *Appropriate Regulatory Treatment for Broadband
Access to the Internet Over Cable Facilities*

Dear Acting Secretary Caton:

I am filing comments regarding the above referenced docket item on behalf of the Kansas City Regional Telecommunications Consortium. The Consortium represents forty cities and counties in the Kansas City metropolitan area and the state of Kansas. A list of the members is attached.

Although the Commission has not requested comments on its declaratory ruling, adopted March 14, 2002, that cable modem service is an "interstate information service," the Consortium must state that it disagrees with this ruling. Broadband Internet service cannot be wholly divorced from the platform, in this case a cable system, that provides it. Further, it appears clear that broadband Internet service is more than just an information service and does indeed have elements of telecommunication and cable services. Finally, the impact on local citizens and governments must be taken into account when making such a decision.

As the line between these services blurs even further it is paramount that the FCC adopt an approach that takes this into account without disenfranchising local citizens and governments. We agree with the goals of the FCC with regard to the provision of broadband service, but it should not be achieved by usurping the authority of local citizens and their governments to create the kinds of communities that they desire. No matter what the service is called, if it uses local public right-of-way, owned by the citizens of a community, and in most cases is literally the same physical infrastructure providing cable and telephone services, it must be responsible to that community to meet basic standards and should be expected to provide fair and reasonable compensation to the community.

Paras. 97-98 of FCC 02-77 expresses concern that a patchwork of regulations “beyond matters of purely local concern” might limit the ability of the FCC to achieve its national broadband policy goals. However, there is no evidence that local governments have in anyway jeopardized these national goals. In fact, local governments in the Kansas City metropolitan area worked in concert through the Telecommunications Consortium to create as seamless a process as possible. There are important matters of local concern that should be addressed by telecommunication, cable, and broadband providers in local communities. These matters include fair and reasonable compensation for use of the public’s right-of-way, a very valuable local resource, the quality of services provided to local citizens, and standards for working in the public’s right-of-way. Therefore, the Consortium believes the FCC should not preclude local authorities from imposing requirements on cable modem service and facilities that are within the confines of traditional local control and are consistent with existing franchise agreements.

With regard to Para. 102, FCC 02-77, the Telecommunications Consortium does not agree with the tentative conclusion that local franchising authorities should be prevented from requiring a separate franchise for cable modem service. Services benefiting from the use of the public’s right-of-way should be accountable to that public. As the variety and quantity of services provided through facilities in the right-of-way increases so does the need to access those facilities for maintenance, upgrades, and equipment alterations and additions. The recent upgrade of cable facilities and concomitant disruption to the right-of-way was in part stimulated by the desire to provide broadband service. Clearly this “information service” had a direct impact on local right-of-way.

Regarding Para. 105 FCC 02-77 the Telecommunications Consortium believes that broadband services using the public’s right-of-way, just like any other service using the right-of-way, should be subject to a locally determined franchise fee in order to fairly and reasonably compensate the local community for the use of this valuable local asset. In a brief survey of some of the members of the Consortium nine cities conservatively estimated that the annual cost of this decision would exceed \$730,000.

In a related matter, Para. 106 FCC 02-77, we agree with the Commission that “cable operators and franchising authorities could not have been expected to predict that the Commission would classify cable modem service as other than a cable service.” Therefore, the Commission should act to clarify that the current ruling does not make cable operators and franchising authorities liable for franchise fees collected in good faith in the past. Leaving this to local courts will not only clog court dockets, but also needlessly drain valuable resources from cable operators and local governments.

The Telecommunications Consortium believes, in response to the inquiry in Para. 108 FCC 02-77, that local franchising authorities should continue to administer local consumer protection and customer service standards. In a monopoly environment, and local cable modem service is a monopoly in most jurisdictions, consumer service standards are essential.

The Kansas City Regional Telecommunications Consortium wants to close this reply by expressing our own concerns. It is very troubling that the Commission seems more than willing to sacrifice local control of the public's right-of-way in order to accommodate large communications companies, many of which operate as effective monopolies in our local communities. It is not just about money, but whether local citizens and local elected officials, can create and operate their communities as they see fit.

Yours truly,

Dean Katerndahl

Dean Katerndahl
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Kansas City Regional Telecommunications Consortium